IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.788 OF 1993.

Shri Rahiman Babu Jamadar : Appellant.

versus

The General Manager,
Maharashtra State Road Transport
Corporation and others. : Respondents.

Mr.P.D.Dalvi for the appellant.
Mr.G.S.Hegde with Mr.Lokesh for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 14th January 2005.

ORAL ORDER

1. Heard advocates for the appellant and the respondents. The appellant, who suffered permanent disablement in an accident that took place on 17th May 1987 as a result of negligence, which is the case of the appellant, of the S.T. driver who was driving the S.T. bearing No.MTO

8414. The appellant/claimant filed petition before the Motor Accident Claims Tribunal at Kolhapur. The claimant's petition was dismissed in its entirety. The appellant only could get Rs.7,500/- as no fault liability compensation. It is this order of dismissal of the claim, the present appeal is filed.

2. The counsel for the appellant strenuously urged that while the claimant examined himself in order to prove negligence of the S.T. driver, nobody was examined on behalf of the respondents, nor the driver of the said S.T. bus was examined. He, therefore, contended that from the evidence of the appellant and the Panchanama it stands proved that the driver was negligent.

3. I have considered the evidence of the appellant. No doubt that he has suffered injuries resulting in partial disablement. However, the main issue in the case was, whether the accident was on account of negligence of said S.T. driver. All the findings of the trial Court, after scrutinising and assessing the evidence of the appellant, were against the appellant and are in the negative.

4. The accident took place on a bridge which is referred to as bleaching Nala which towards eastern side of Octroi Naka on Jaysingpur Sangli road in the jurisdiction of Jaysingpur Police Station. The claimant in his cross examination admitted that he saw the S.T. bus when he was passing by the road on motor cycle when that S.T. bus was at a distance of about 1000 feet from him. He also admitted that he did not put on the light of the motor cycle while over taking the bullock cart and proceeding ahead at the time of accident. According to him the accident took place about 20 feet away from the bridge. However, the panchanama shows that accident took place on the bridge itself. The width of the bridge is 25 ft. The most important aspect that goes against the appellant is the damage suffered by the S.T.

5. Road is East West. The S.T. was going towards West and the motor cycle of the appellant was coming from East West. If the bullock cart was in between the motor cycle and the S.T. bus and, if the appellant had over taken the bullock

cart then in order to go to his left he was bound to have turned left and in that process it appears that he dashed against the S.T. bus, not in the centre but towards the right side of the S.T. bus i.e. towards driver side. Panchanama has noted down the damages caused to the motor cycle as well as to the S.T. bus and, it is mentioned therein that there is dent to the bumper of the S.T. bus in the front and its length is 6 inches. It is clear from this fact that it was the motor cycle which hit the S.T. bus while going towards left after over taking the bullock cart.

6. There is nothing on record to show that the S.T. driver while coming from West and going to East on the bridge was required to change direction either to the right or to the left because of any temporary obstruction on the road and any vehicular traffic. Therefore, it is clear that the S.T. was coming straights on bridge, but it was in action of over taking of the bullock cart that the accident occurred. It is further clear from the evidence that it had rained at that time; that must likely, while over taking the bullock cart and going towards

left, the motor cycle slip and hit the S.T. bus. Therefore, the crucial question about negligence of the S.T. driver and the respondents has been answered by the trial Court in the negative, and there are no circumstances to come to any different conclusion. If the issue goes against the appellant, then nothing remains in this matter. However, looking to the permanent partial disablement to the appellant in his young age, the respondents could be directed to pay ex-gratia amount of Rs.10,000/- to the appellant in addition to no fault liability compensation of Rs.7,500/-. Hence the following order :-

:ORDER:

The appeal is dismissed.

However, the respondents are directed to pay Rs.10,000/- to the appellant within six weeks from today as ex-gratia amount.

This order will not be taken as precedent.

[D.G.DESHPANDE]

14/01/2005 JUDGE.